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No. 449

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT.

No. 15900

SHELL OIL COMPANY,

Petitioner,

vs.

FEDERAL POWER COMMISSION,

Respondent.

PETITION TO REVIEW AND SET ASIDE ORDER OF THE FEDERAL POWER COMMISSION.

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U. S. COURT OF APPEALS
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PETITION TO REVIEW AND SET ASIDE ORDER OF THE FEDERAL POWER COMMISSION.

TO THE HONORABLE THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT:

SHELL OIL COMPANY, herein referred to as "Shell", petitions this Honorable Court to review and set aside a final order of the Federal Power Commission, herein called "the Commission", entered in its Opinion No. 284, issued September 9, 1955 in a consolidated proceeding entitled *In the Matters of Deep South Oil Company of Texas, Docket No. G-2952, Humble Oil & Refining Company, Docket No. G-5261, and Shell Oil Company, Docket No. G-4671,* insofar as said order denies the petition of Shell.

1.

Nature of the Proceeding.

On November 5, 1954, Shell filed with the Commission a petition for declaratory order seeking a status determination under the Natural Gas Act (52 Stat. 831; 15 U. S. C. §717r *et seq.*, herein called the Act) as to Shell's sale of

casinghead gas at the outlet of the field separator in the McElroy Field, Crane and Upton Counties, Texas, to Phillips Petroleum Company (herein called "Phillips"). The Commission assigned Docket No. G-4671 to this petition.

Deep South Oil Company of Texas (herein called "Deep South") had previously filed with the Commission a similar petition seeking a declaratory order that certain of its sales in the North Big Hill Field, Jefferson County, Texas, were not subject to the provisions of the Act. This petition was assigned Docket No. G-2952 by the Commission.

On November 18, 1954 Shell filed with the Commission a petition to intervene in the Deep South (Docket No. G-2952) proceeding and for a status determination as to a contract of sale under which Shell sells casinghead gas and gas-well gas produced in the Nome Field, Jefferson County, Texas to Texas Gas Pipe Line Corporation. By order adopted December 8, 1954 the Commission granted this intervention.

On November 18, 1954 the Commission consolidated for hearing the Shell proceeding in Docket No. G-4671 with the Deep South proceeding in Docket No. G-2952 and with a similar proceeding which had been instituted by Humble Oil & Refining Company at Docket No. G-5261.

A hearing in this consolidated proceeding was held before a Presiding Examiner of the Commission on November 29 and 30, December 1 and 2, 1954 and January 10, 1955. On April 5, 1955 the Presiding Examiner issued his decision in which he concluded that the sales of each of said companies involved in the consolidated proceeding were sales in interstate commerce of natural gas for resale within the purview of the Act, and that each of said companies was a natural-gas company within the meaning of the Act. Each of said companies timely filed exceptions to this decision and the matter was orally argued before the Commission. On September 9, 1955 the Commission issued its Opinion 284, and accompanying order, in which it affirmed the decision of the Presiding Examiner. On Octo-

ber 7, 1955 Shell and Deep South each filed an application for rehearing. On October 4, 1955 Humble filed a similar application.

On November 4, 1955 the Commission issued an order denying each of the applications for rehearing.

The questions involved, as to Shell, are (1) whether Shell's sale and delivery of casinghead gas at the lease separator in the McElroy Field, and (2) whether Shell's sale and delivery of casinghead gas and gas-well gas at the separator and the well head, respectively, in the Nome Field, constitute sales in interstate commerce of natural gas for resale for ultimate public consumption so as to make Shell a natural-gas company within the meaning of the Act.

2.

Jurisdiction of This Court.

a. This Court has jurisdiction of the subject-matter of this petition by virtue of Section 19b of the Act (52 Stat. 831; 15 U. S. C. 717r(b)).

b. The Commission is an agency of the United States Government created by Section 1 of the Federal Power Act (41 Stat. 1063; 16 U. S. C. 792, as amended; Reorganization Plan No. 9, Section 3, effective May 24, 1950, 15 Fed. Reg. 3175).

c. Shell is a corporation incorporated under the laws of the State of Delaware and does an extensive oil and gas business in Texas, Louisiana and Mississippi. It has two principal offices in Texas, one located in Houston and one located in Midland. Its principal office in Louisiana is located in New Orleans. Shell is now, and for many years has been, engaged in exploring for, producing, manufacturing and marketing oil and natural gas in the States of Texas, Louisiana and Mississippi. More than 75% of the natural gas which Shell produces and sells is produced and sold in the States of Texas, Louisiana and Mississippi. Shell also does business in all 48 States of

the United States, but by far the greater portion of its natural gas business is transacted from its offices in Houston and Midland, Texas and New Orleans, Louisiana. It employs several thousand employees in the States of Texas, Louisiana and Mississippi and the records of its production and sales of natural gas in Texas, Louisiana and Mississippi are kept and maintained in its Houston, Midland and New Orleans offices. Most of Shell's business relating to the exploration for and production and sale of natural gas originates in and is transacted from its offices in Houston, Midland and New Orleans.

d. Shortly after the Commission issued its order of November 4, 1955 denying the applications for rehearing, Deep South filed with this Honorable Court its petition to review and set aside Opinion 284 of the Commission. As required by Section 19b of the Act, the Commission, upon being served with a copy of Deep South's petition, filed with this Honorable Court the transcript of the record in the consolidated proceeding in which Opinion 284 was issued. Thereupon, this Court obtained exclusive jurisdiction to affirm, modify, or set aside Opinion 284 in whole or in part, under Section 19(b) of the Act.

e. Shell was a party to the proceeding in which Opinion 284 was issued and Shell is aggrieved thereby. Each of the points hereinafter set forth upon which Shell relies herein, was urged in the application for rehearing which Shell filed with the Commission.

3.

The Evidence.

As to the McElroy Field.

The evidence adduced at the hearing before the Presiding Examiner establishes:

a. In 1938 Shell acquired certain oil and gas leases in the McElroy Field. At the time of this acquisition, the previous owners of these leases had sold the casinghead

gas to Phillips under a casinghead gas contract dated May 7, 1936. Shell, therefore, acquired its leases subject to and became a seller under the casinghead gas contract. Since its acquisition Shell has operated the leases and delivered the casinghead gas to Phillips.

b. At the time of the execution of the casinghead gas contract, and at the date when Shell acquired the leases and became bound by the contract, Phillips, the purchaser, gatherer and processor of the casinghead gas, was not selling any residue gas from its Crane Gasoline Plant, which plant is located in the McElroy Field about five miles from Shell's leases. It was not until July 1950 that any part of the residue was sold by Phillips to El Paso Natural Gas Company (herein called "El Paso"), although the Crane Gasoline Plant began operations in 1929.

c. There are 19 pumping oil wells on Shell's leases. The casinghead gas which Shell sells to Phillips is produced from these wells along with the oil. In the reservoir, casinghead gas is in solution or associated with crude oil and is produced from the oil wells dissolved in the oil.

d. Casinghead gas normally consists of fixed gases, particularly methane and ethane, together with liquefiable hydrocarbons, water vapor and sometimes hydrogen sulphide and carbon dioxide.

e. The well effluent from Shell's 19 oil wells flows at well pressure through small production flow lines to a single separator which is located on the lease. The separator is a small tank where low pressure is maintained, and where there is a separation of the crude oil and free water from the casinghead gas. The crude oil passes out the bottom of the separator into lease storage tanks, and the casinghead gas passes out the top of the separator into a small vent line which connects with the terminus of a 4-inch lateral line of Phillips a few feet from the separator on Shell's lease. At this point Phillips takes delivery, title and exclusive control of the casinghead gas.

f. At the point of delivery the casinghead gas contains methane, ethane, high quantities of liquefiable hydrocarbons

(natural gasoline, butane and propane), water vapor, and an exceptionally large amount of hydrogen sulphide. At the time and place of delivery from Shell to Phillips, the casinghead gas is not suitable for public consumption nor is it then fit for transportation in high pressure gas lines which are used for transporting gas in interstate commerce.

g. After the casinghead gas enters the 4-inch lateral line of Phillips on the lease, it flows at well or separator pressure a distance of 1,531 feet where it enters one of four main gathering lines which Phillips owns and operates in the field for the purpose of gathering casinghead gas from 897 wells in the field to its gasoline plant. At the point where the casinghead gas purchased from Shell enters one of the main gathering lines, the line is ten inches in diameter but it progressively increases in size between that point and the plant (a distance of five or six miles) to 24 inches. Upon entering this main gathering line, the casinghead gas is commingled with casinghead gas from a great number of other wells in the field, and as part of this commingled mass, it moves at slightly decreasing pressure to the inlet of the gasoline plant.

h. The Crane Gasoline Plant of Phillips is served by four 24-inch main field gathering lines which bring into the plant between 33,000,000 and 34,000,000 cubic feet of casinghead gas per day from 897 wells in the field. Of this amount, only approximately one-half million cubic feet a day come from the 19 Shell wells.

i. When the commingled mass of casinghead gas reaches the plant, it is first scrubbed to remove water and small amounts of crude oil. After being compressed to approximately 50 pounds pressure it enters absorbers wherein an absorption process takes place by a mixture of the casinghead gas with an absorption oil. This results in the liquefiable hydrocarbons being absorbed from the casinghead gas and leaves a sour residue gas.

j. Part of the residue gas is sold by Phillips to El Paso with delivery being made near the outlet side of

Phillips' plant, part thereof is used by Phillips as fuel in the plant, and part is returned to the leases. El Paso then treats the sour residue gas which it purchases to remove hydrogen sulphide from it. After dehydration, this residue enters one of El Paso's lines for transportation in other states.

k. After Shell delivers the casinghead gas to Phillips at the separator, Shell has no further control over it, nor any title to it.

l. The greater part of the money which Shell receives for the casinghead gas is for liquids extracted from the gas.

m. The contract under which Phillips sells the sour residue gas to El Paso was negotiated solely between those parties. Shell is not a party to that contract in any capacity and it had nothing to do with its negotiation.

As to Nome Field.

a. Shell has 8 oil wells in the Nome Field from which casinghead gas is produced, and one gas well. All of this gas has been sold by Shell to Texas Gas Pipe Line Corporation under a contract which obligates the purchaser to construct a segment of gathering line from the points at which the gas will be delivered, to a junction with an existing gathering line which goes to the Winnie processing plant. The casinghead gas is delivered at field separators and the gas-well gas is delivered at the well head. After taking title and delivery at those points, the purchaser gathers the gas, or causes it to be gathered, commingled with other gas, into the Winnie plant where it is processed. Some of the residue gas from the Winnie plant (which yet must be dehydrated) is delivered to Transcontinental Pipe Line Company. The processing which this gas undergoes in the Winnie plant is similar to the processing which the gas from the McElroy Field undergoes in the Crane Gasoline Plant.

4.

Errors of the Commission.

The Commission concluded that the foregoing sales were sales in interstate commerce of natural gas for resale. Shell relies herein upon the following points, each of which was urged in its application for rehearing filed with the Commission:

a. The Commission erred as a matter of law in concluding that Shell's sale of casinghead gas to Phillips in the McElroy Field is a sale in interstate commerce of natural gas for resale, where the casinghead gas is sold and delivered at the lease separator in the field where the gas is produced, and must be gathered to a processing plant in the field, where it must be processed for manufacture into liquid products and residue gas and treated for removal of hydrogen sulphide before the by-product, residue gas, is sold and delivered to an interstate pipe line company.

b. The Commission erred as a matter of law in concluding that Shell's sale of casinghead gas and gas-well gas to Texas Gas Pipe Line Corporation in the Nome Field is a sale in interstate commerce of natural gas for resale, where the casinghead gas is sold and delivered at lease separators and the gas-well gas is sold and delivered at the wellhead, and where the purchaser gathers this gas to a processing plant in or near the field where the gas is processed and dehydrated before the residue is sold and delivered to an interstate pipe line company.

c. The Commission erred in concluding that the casinghead gas sold by Shell is the same product as the residue gas which the plant operator later sells to an interstate pipe line company. This conclusion is contrary to law, is without evidentiary support, and is contrary to substantial evidence in the record.

d. The Commission erred in concluding that Shell's sales are not for manufacture but for resale. This conclu-

sion is contrary to law, is without evidentiary support, and is contrary to substantial evidence in the record.

e. The Commission erred in concluding that the casinghead gas which Shell sells is "natural gas" within the meaning of the Act. This conclusion is contrary to law, is without evidentiary support, and is contrary to substantial evidence in the record.

f. The Commission erred in concluding that Shell's sales are not covered by the production and gathering exemption of Section 1b of the Act (52 Stat. 821, 15 U. S. C. 717). This conclusion is contrary to law, is without evidentiary support, and is contrary to substantial evidence in the record.

g. The Commission erred in concluding that the gas which Shell sells flows continuously and without interruption from the well into the interstate pipe line. This conclusion is without evidentiary support and is contrary to substantial and uncontradicted evidence.

h. The Commission erred in failing to apply a firmly established rule of law that an interstate journey does not begin until after manufacturing and processing have been completed.

i. The Commission erred, as a matter of law, in failing to distinguish between an "affecting" commerce statute and an "in" commerce statute. The Natural Gas Act is one of the latter, and the Commission erred in construing it as one of the former.

j. The Commission erred in failing to find that Shell's sales involved in this proceeding are not sales in interstate commerce of natural gas for resale within the meaning of the Act, but constitute local, intrastate transactions not covered by the Act.

WHEREFORE, Shell prays that a copy of this petition be served upon Respondent as required by law and that this Honorable Court review and set aside in its entirety Opinion No. 284 and the accompanying order issued by the

Commission on November 4, 1955. Shell further prays that this Court determine and declare that its sales in the McElroy and Nome Fields do not constitute sales of natural gas in interstate commerce for resale and that Shell is not a natural-gas company by virtue of said sales.

Respectfully submitted,

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By OLIVER L. STONE.

Dated, New York, N. Y., December 27, 1955.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

OLIVER L. STONE, being first duly sworn, deposes and says he is one of the attorneys for the Petitioner; that he is conversant with the matters set forth in the petition for review; that he has read the above and foregoing petition for review and that the statements of fact contained in such petition for review are true and correct.

OLIVER L. STONE

Subscribed and sworn to before me
this 27th day of December, 1955.

.....

Notary Public in and for New York, N. Y.